

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

January 10, 2003

IN RE:

**CHRISTOPHER LACY
AND RENEE LACY D/B/A
C & R ASSOCIATES**

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**DOCKET NO
02-00324**

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on December 16, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Christopher Lacy and Renee Lacy d/b/a C & R Associates ("C & R" or the "Company") related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.¹ The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-

¹ See Tenn. Code Ann. § 65-4-401 *et seq.*

Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.² “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”³

The CSD’s investigation in this docket commenced after it received a complaint on January 10, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from C & R on December 27, 2001. The CSD provided C & R with notice of this complaint on January 17, 2002. C & R was not registered as a telephone solicitor at the time of the alleged telephone solicitation. On March 8, 2002, the CSD received a second complaint alleging that a person acting on behalf of C & R made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call Register on February 12, 2002. The CSD provided C & R with notice of this complaint on March 11, 2002.

The proposed Settlement Agreement was negotiated as the result of the CSD’s investigation into the complaints against C & R. The maximum penalty faced by C & R in this docket was six thousand dollars (\$6,000) arising from the two (2) complaints and the failure to register in the Do-Not-Call Program. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be

² See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

³ Tenn. Code Ann. § 65-4-405(f).

considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

C & R, which is located in Dickson, Tennessee, employs two (2) workers. It is a distributor of Kirby Vacuum Cleaners. During the investigation, C & R contacted the CSD and expressed an interest in resolving this matter. In addition, C & R registered with the TRA as a telephone solicitor on March 22, 2002 and renewed its registration on September 25, 2002. The TRA has received no additional complaints from Tennessee consumers since C & R received notice of the complaints. C & R also agreed to pay to the Authority the amount of four thousand eight hundred dollars (\$4,800) in settlement of these violations. The first payment, of two thousand dollars (\$2,000), is to be paid to the Office of the Chairman no later than December 30, 2002. There will be seven (7) additional payments of four hundred dollars (\$400), each of which shall be remitted to the TRA no later than the first business day of each month for the seven (7) consecutive months following the first payment.

A representative of C & R participated telephonically during the Authority Conference on December 16, 2002. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

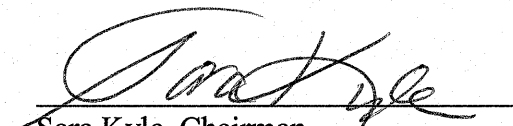

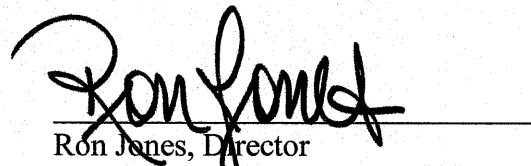
IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. The amount of four thousand eight hundred dollars (\$4,800) shall be paid by C & R to the TRA. The first payment of two thousand dollars (\$2,000) shall be paid no later than December 30, 2002. There will be seven (7) additional payments of four hundred dollars

(\$400), each of which shall be remitted to the TRA no later than the first business day of each month for the seven (7) consecutive months following the first payment.

3. Upon payment of the amount of four thousand eight hundred dollars (\$4,800) and compliance with the terms of the Settlement Agreement attached hereto, C & R is excused from further proceedings in this matter, provided that, in the event of any failure on the part of C & R to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.


Sara Kyle, Chairman
Pat Miller, Director
Ron Jones, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

CHRISTOPHER LACY AND RENEE
LACY, D/B/A C&R ASSOCIATES

DOCKET NO. 02-00324

DO-NOT-CALL T02-00018
PROGRAM T02-00130
FILE NUMBERS

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Christopher Lacy and Renee Lacy, d/b/a C&R Associates ("C&R Associates" or the "Company"). This Settlement Agreement pertains to two (2) complaints received by the CSD alleging that C&R Associates violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07. This Settlement Agreement is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the

EXHIBIT

A

TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

The CSD's investigation in this docket commenced after it received a complaint on January 10, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from C&R Associates on December 27, 2001. The CSD provided C&R Associates with notice of this complaint on January 17, 2002. The CSD received a second complaint on March 8, 2002, alleging that a person acting on behalf of C&R Associates made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on February 12, 2002. The CSD provided C&R Associates with notice of this complaint on March 11, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by C&R Associates in this proceeding is six thousand dollars (\$6,000), arising from the two (2) telephone solicitations and the Company's failure to register in the Do-Not-Call Program.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. C&R Associates is located in a Dickson, Tennessee, and has two employees. It is a distributor of Kirby Vacuum Cleaners. After receiving

notice of the complaints, C&R Associates contacted the CSD and expressed an interest in resolving this matter. In addition, C&R Associates registered with the TRA as a telephone solicitor on March 22, 2002, the day after meeting with members of the CSD to negotiate this agreement. CSD has received no additional complaints from Tennessee consumers since C&R Associates received notice of the violations. C&R Associates renewed its registration in the Do-Not-Call program on September 25, 2002.

In an effort to resolve these complaints, represented by the file numbers above, CSD and C&R Associates agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:


1. C&R Associates admits that the two (2) complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Agreement, C&R Associates has come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). C&R Associates contacted CSD and expressed an interest in resolving this matter. In addition, C&R Associates registered with the TRA as a telephone solicitor on March 22, 2002. C&R Associates renewed its registration in the Do-Not-Call program on September 25, 2002.
3. C&R Associates agrees to pay four thousand eight hundred dollars (\$4,800.00) in settlement of these complaints, and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Chairman of the TRA no later than December 30,

2002.¹ The remaining seven (7) installments of four hundred dollars (\$400.00) each shall be remitted to the TRA no later than the first business day of each month for the next seven (7) consecutive months. Upon payment of the amount of four thousand eight hundred dollars (\$4,800.00) in compliance with the terms and conditions of this Settlement Agreement, C&R Associates is excused from further proceedings in this matter.

4. C&R Associates agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. C&R Associates agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that C&R Associates fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. C&R Associates shall pay any and all costs incurred in enforcing the Settlement Agreement.
7. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

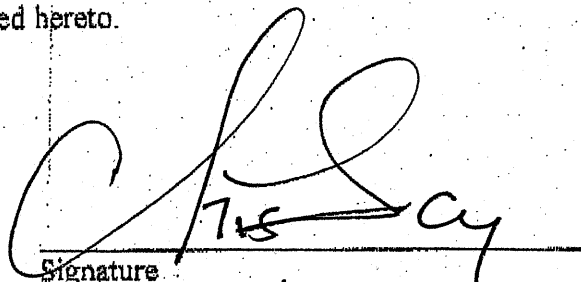
¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No. 02-00324.

8. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

12-3-02
Date



Signature

Chris Lacy
Print Name

Owner
Print Title

10-1-02
Date